

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
)	
v.)	Criminal No. 4:04-cr-40002-NMG
)	
)	
JOSEPH DiFLUMERA)	
)	

DEFENDANT'S MOTION FOR STATUS CONFERENCE

Defendant Joseph DiFlumera, by and through his attorneys, hereby moves the Court to reschedule the change of plea and sentencing hearing currently scheduled for July 27, 2004 to make it a status conference. In support of this motion, DiFlumera states as follows:

1. The Supreme Court's recent decision in *Blakely v. Washington*, 542 U.S. ___, 124 S. Ct. 2531 (2004), will have a significant impact on this case. DiFlumera submits that *Blakely* applies to the Federal Sentencing Guidelines, and that he should be entitled to either have enhancement findings based solely on his plea colloquy or based on a jury finding the requisite facts beyond a reasonable doubt. These factual findings will include, but will not be limited to, the amount of loss and whether DiFlumera made any threats of physical violence.
2. In addition, the Court has not yet ruled on Defendant's Motion to Permit the Presentation of Evidence at Sentencing Hearing. DiFlumera submits that despite how *Blakely* affects the Federal Sentencing Guidelines it nonetheless highlights the importance of being able to present evidence at the sentencing hearing, and that evidence

in this case will be necessary to determine several issues, including, but not limited to, the amount of loss, whether DiFlumera made any threats of physical violence, as well as the grounds for DiFlumera's motion for a downward departure.

3. Finally, in the event that the Court allows this motion, Defendant requests that his presence at the status conference be waived in light of the fact that he is currently on pretrial release in Florida.

WHEREFORE, DiFlumera respectfully requests that this motion be allowed.

By his attorneys,

/s/ Paul V. Kelly
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